90-1111

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

STANLEY ROBINSON,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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QUESTION PRESENTED

Illinois Revised Statute, Chapter 38, Section 108-9, authorizes law enforcement officers to detain and search any person found on premises being searched pursuant to a search warrant, to protect the officers from attack or to prevent the disposal or concealment of any instruments, articles or things described in the warrant. In the instant case, the petitioner was searched by law enforcement officers immediately after he entered a residence where the officers were executing a search warrant.

A police officer testified at the hearing on the petitioner's motion to suppress evidence allegedly seized that he did not fear attack from the petitioner. Moreover, the search occurred as soon as the petitioner entered the residence, some twenty minutes after the officers arrived to search the residence, and after the police officers recovered contraband from a bedroom which was occupied by the person named in the search warrant.

The question presented for review herein is whether the application of this Illinois Statute to the facts of the instant case violated the Fourth and Fourteenth Amendments and whether the search of the petitioner was reasonable.

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The petitioner, Stanley Robinson, respectfully prays that a Writ of Certiorari issue to review the judgment and order of the Illinois Appellate Court, First District, rendered on June 28, 1990, which affirms his conviction of possession of a controlled substance and sentence of four years in the Illinois Department of Corrections.

ORDER BELOW

The order of the Illinois Appellate Court appears at Appendix A, *infra*, pp. A1-A3. The Appellate Court order upon which judgment was entered is unpublished; the dis-

position of petitioner's appeal to the Illinois Appellate Court in this unpublished order is authorized by Illinois Supreme Court Rule 23, Ill.Rev.Stat., Ch. 110A, Sec. 23.

JURISDICTION

The judgment of the court below was entered on June 28, 1990. The Illinois Supreme Court denied the petitioner's petition for leave to appeal on October 3, 1990; the letter denying his petition appears at Appendix B, *infra*, B1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sec. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment to the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Illinois Revised Statutes, Chapter 38, Section 108-9. These are reprinted in pertinent part in Appendix C.

STATEMENT OF THE CASE

On February 13, 1988 at approximately 3:30 p.m., Chicago Police Officers executed a search warrant at Apartment 4A, 7464 North Greenview, Chicago, Illinois. (R. 4,

131) The search warrant authorized the search of "... 7464 N. Greenview, Apt. 4A (1st North), Chicago, Illinois, Cook County" and the person of "... Chris Campbell M/B 20-22 YOA 5'10"-5'11" 140-150 lbs Dark Comp." (R. 131) The search warrant was issued based upon a complaint which alleged that Christopher Campbell sold cocaine to a confidential informant in the apartment described in the warrant. (R. 129-130)

Upon arriving at the North Greenview address, the police officers first encountered Christopher Campbell when he opened the front door. (R. 5, 9) After presenting Mr. Campbell with a copy of the search warrant, the police officers conducted a search of Mr. Campbell's person. (R. 5) This search resulted in the recovery of a loaded .38 caliber revolver from Mr. Campbell's back. (R. 6) When the police officers entered the apartment, there were two other adults present who were also searched. (R. 9-10, 16)

The police officers then conducted a search of the apartment and recovered contraband from the east bedroom. (R. 6) From this same bedroom, the police officers also recovered a hospital bill bearing the name of Christopher Campbell. (R. 6)

Approximately twenty minutes after the arrival of the police officers at the apartment and after the recovery of the contraband in the east bedroom, the petitioner entered the apartment. (R. 7, 13) According to a police officer, the petitioner used a key to get in the apartment. (R. 7) Upon seeing the petitioner enter the apartment, the police officers conducted a search of the petitioner and recovered "... a hard object" which was described as "about the size of a small fist," from the petitioner's groin. (R. 7) The police officers then conducted a further

search of the apartment and recovered a "piece of mail in the name of Stanley Robinson at that address." (R. 38)

At the hearing on the motion to suppress evidence illegally seized, one of the police officers who searched the petitioner testified as follows:

> Q. When Mr. Robinson arrived, did he arrive alone?
>
> A. Yes.
>
> Q. Did he make any—did he say anything or make any gestures indicating that he would be armed and/or dangerous?
>
> MS. BLACK: Objection.
>
> THE COURT: You can tell us.
>
> THE WITNESS: No.
>
> BY MR. SMEETON:
>
> Q. Did you notice any bulges or anything about his person that would indicate to you that he was armed or dangerous?
>
> A. No. (R. 14)

The petitioner raised the question of the legality of the search in the aforementioned motion to suppress evidence illegally seized which was filed and heard in the Circuit Court of Cook County, Illinois. That court denied the petitioner's motion (R. 23-25), and from the denial the petitioner appealed to the Appellate Court of Illinois. The legality of the search was raised in the Appellate Court of Illinois in the petitioner's brief filed with that court; the issue was discussed by the Appellate Court of Illinois in its order. (Appendix A, A2-A3) The Illinois Supreme Court denied the petitioner's Petition for Leave to Appeal the judgment and order of the Illinois Appellate Court. (Appendix C, C1)

REASONS FOR GRANTING THE WRIT

The court below has decided a federal question of substance in a way that conflicts with applicable decisions of this Court. The petitioner maintains that the court below erred in affirming the denial of his motion to suppress evidence illegally seized where the search was conducted immediately after the petitioner entered the residence where police officers were executing a search warrant, without any indication that the petitioner either threatened the police officer's safety or threatened the disposal or concealment of evidence.

The court below decided that the test to be applied to the instant facts was whether, under the circumstances presented, the search was reasonable. (Appendix A, A3) The court below reasoned that since the petitioner arrived at the residence 20 minutes after a loaded revolver was found and entered the residence unannounced by use of a key, the search of the petitioner was reasonable. (Appendix A, A3) The court below, however, ignored petitioner's argument that there was no probable cause to believe that the petitioner posed a threat to the safety of the police officer executing the warrant or probable cause to believe that the petitioner was in a position to dispose of or conceal items mentioned in the warrant.

In *Ybarra v. Illinois*, 444 U.S. 85 (1979), the petitioner was a patron in a tavern and was present when a search warrant was executed by police officers. That warrant authorized the search of the premises and the bartender. When the petitioner was searched, heroin was recovered from a cigarette pack removed from the petitioner's pocket.

In reversing the judgment of the Illinois Appellate Court which upheld the search of Ybarra, this Court reasoned that while the police officer did possess a warrant based on probable cause to search the tavern and the bartender, the Fourth and Fourteenth Amendments protected Ybarra's legitimate expectation of privacy. "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person." *Ybarra, supra,* at 91.

In the instant case there was no probable cause particularized with respect to the petitioner to authorize the search of his person immediately upon his entering the residence. At the hearing on the petitioner's motion to suppress evidence illegally seized, the police officer testified that he had no reason to believe that the petitioner posed a threat to the officer's safety. Moreover, the search occurred as soon as the petitioner entered the premises and, therefore, the police officer had no probable cause to believe that the petitioner would dispose of or conceal items mentioned in the search warrant. In addition, the petitioner entered the premises 20 minutes after the police officers arrived and after they recovered contraband from a bedroom which the police officers determined was occupied by the person whose search was authorized by warrant.

In the instant case the petitioner's "mere propinquity" to another person independently suspected of criminal activity, does not give rise to probable cause to search. *Ybarra, supra,* at 91. This is true even though the petitioner, as the court below found, entered unannounced with a key 20 minutes after a loaded weapon was recovered. There simply was nothing known to the police officers at the time they searched the petitioner which amounts to probable cause for that search.

Finally, the search of the petitioner in this case was unreasonable. The custodial search of the petitioner was not justified by the facts and circumstances herein presented: The petitioner arrived 20 minutes after the police officers began searching and after they recovered contraband from the person named in the search warrant and the police officer had no reason to believe that the petitioner would be armed or dangerous or involved in criminal activity.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

Order of the Appellate Court of Illinois
First District, Fourth Division
No. 89-1132, Filed June 28, 1990

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

STANLEY ROBINSON,

Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
No. 88-CR-13079
Honorable Jack Stein, Judge Presiding.

ORDER

After a bench trial defendant Stanley Robinson was found guilty of possession of 33.8 grams of cocaine and sentenced to four years in the Illinois Department of Corrections. Defendant contends that the trial court erred in denying his motion to suppress the evidence seized from him.

On February 13, 1988, after an informant purchased cocaine at 7464 North Greenview, Apartment 4A, Chicago police officer William Stump and five other officers executed a search warrant that was issued both for the apartment and for the person of Chris Campbell. When the police went to the apartment, a man answered the

door, and Officer Stump presented him with the search warrant. The officer then performed a pat-down search and discovered a fully loaded snub-nosed .38-caliber revolver in the back of the suspect's pants. No identification was found on the individual's person, but he admitted that he lived in the apartment. While searching the apartment, the officers found a clear plastic bag containing white powder and a hospital bill bearing the name of Chris Campbell with that address.

About 20 minutes after police arrived, defendant used a key to enter the premises. Once defendant was inside the apartment, Officer Stump performed a pat-down search and retrieved a hard object about the size of a fist from defendant's groin area. Later the object was determined to be five packets of cocaine totaling 33.8 grams. The entire apartment was then searched and a piece of mail with defendant's name and the apartment's address was recovered in the dining-room area.

At the hearing on defendant's motion to suppress, Officer Stump testified that there was nothing about defendant's person or actions to indicate that he was armed or dangerous.

Defendant contends that the mere fact that he entered the apartment with a key was not sufficient to give rise to the probable cause necessary for a pat-down search under section 108-9 of the Code of Criminal Procedure. Ill. Rev. Stat. 1987, ch. 38, par. 108-9.

In Illinois, a search under section 108-9 is similar to a search incident to arrest, justified both by the need of the officer to protect himself and the need to prevent the possible disappearance or destruction of evidence. (*People v. Campbell* (1979), 67 Ill. App. 3d 748, 385 N.E.2d 171.) However, a person searched pursuant to section 108-9

must have a sufficient connection with either the premises or the persons described in the search warrant. (*People v. Gutierrez* (1985), 109 Ill. 2d 59, 62, 485 N.E.2d 845.) The test is whether or not the search was reasonable under the circumstances. 109 Ill. 2d 59, 64.

Here the record indicates that during the officers' search for narcotics, and about 20 minutes after Officer Stump had retrieved a loaded revolver from the unidentified man in the apartment, defendant entered the premises unannounced by using a key. We find that this evidence was sufficient to show that defendant had some control or connection with the premises and that under the dangerous circumstances inherent in their search, the officers were justified in searching defendant. See *People v. Campbell* (1979), 67 Ill. App. 3d 748, 385 N.E.2d 171.

Accordingly, the judgment of the circuit court of Cook County is affirmed. As part of our judgment, we grant the State's request and assess defendant $50 as costs for this appeal.

Affirmed.

JIGANTI, J., with JOHNSON and LINN, JJ., concurring.

APPENDIX B

Order of the Supreme Court of Illinois Denying Leave to Appeal

(Letterhead Of)

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

October 3, 1990

Mr. Thomas V. Gainer, Jr.
Nealis & Bradley, Ltd.
10345 S. Western Ave.
Chicago, IL 60643

No. 70604—People State of Illinois, respondent, v. Stanley Robinson, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 25, 1990.

APPENDIX C

Constitutional and Statutory Provisions Involved

The Fourth Amendment to the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law. . ."

Illinois Revised Statutes (1987), Chapter 38, Section 108-9 provides as follows:

> "In the execution of the warrant the person executing same may reasonably detain to search any person in the place at the time: (a) To protect himself from attack, or (b) To prevent the disposal of any instruments, articles or things particularly described in the warrant."